



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2012-0103]

RIN 1625-AA01

Anchorage; Lower Mississippi River, Above Head of Passes,
Convent, LA and Point Pleasant, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a new anchorage area on the Lower Mississippi River, Above the Head of Passes (AHP), located at the Belmont Light extending from Mile Marker (MM) 152.9 to 154 on the Left Descending Bank (LDB) of the river. The anchorage will double the available anchorage areas in this section of the river, which is necessary to help accommodate increased vessel volume and improve navigational safety for vessels transiting this river section. As discussed below, the Coast Guard decided not to establish a second anchorage at Bayou Goula, as had been proposed.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0103. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, Coast Guard; telephone 504-365-2280, e-mail Brandon.J.Sullivan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On Thursday, November 8, 2012 the Coast Guard published a Notice of Proposed Rule Making (NPRM) in the Federal Register (77 FR 66942). There were 3 comments received. There were no public meetings requested or held as a result of the NPRM; however the anchorage area was the subject of a public Lower Mississippi

River Waterway Safety Advisory Committee (LMRWSAC) meeting in December 2011, prior to the publication of the NPRM. LMRWSAC is a Federal Advisory Committee operating in accordance with 5 U.S.C. App. 2, and the minutes of the December 2011 meeting are available in the docket.

B. Basis and Purpose

The Coast Guard is authorized under section 7 of the Rivers and Harbors Act of 1915 (33 U.S.C. 471) to establish anchorages in the navigable waters of the United States through the regulations found in 33 CFR parts 109 and 110. At its December 2011 meeting, the LMRWSAC recommended the establishment of the anchorage area in the Lower Mississippi River (LMR), AHP.

LMRWSAC is responsible for advising, consulting with, and making recommendations to the Secretary of Homeland Security on matters relating to the transit of vessels to and from the ports of New Orleans, Plaquemines, St. Bernard, South Louisiana, and Baton Rouge. Participants at the December 2011 meeting noted that the anchorage is necessary to address navigation safety concerns, in regards to the increased volume of vessels in the proposed area.

C. Discussion of Comments, Changes and the Final Rule

Three issues were raised by comments submitted to the docket. The first comment received was from the National Oceanic and Atmospheric Administration (NOAA) National Ocean Service Office of Coast Survey. The two concerns raised were the encroachment of the anchorage areas on the U.S. Army Corps of

Engineers (USACE) revetments and pipeline crossings in the proposed areas.

After collaboration with USACE and the Coast Guard, the NOAA National Ocean Service Office of Coast Survey was able to update its data on the exact locations of the revetments, which alleviated the encroachment concern. This is noted in a second comment submitted by the NOAA National Ocean Service Office of Coast Survey.

Regarding the pipeline crossings noted in the NOAA comments, specifically in the proposed Bayou Goula anchorage area, the Coast Guard has determined the need for further investigation and will not be going forward with that anchorage area as proposed. At this time, the Coast Guard is establishing only the Belmont anchorage area, and not the Bayou Goula anchorage area that had been proposed in the NPRM.

Finally, the last concern was raised in the comment submitted by the Department of Interior regarding the habitat of the Pallid Sturgeon. The focus of the concern revolved around "entrainment issues associated with dredging operations in the Mississippi and Atchafalaya Rivers and through diversion structures off the Mississippi River." The establishment of the Belmont anchorage area will not require dredging and will not create a diversion. After consideration, therefore, the Coast Guard did not modify the proposed Belmont anchorage in response to this comment.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on routine navigation are expected to be minimal because the anchorage area will not unnecessarily restrict traffic as it is located outside of the established navigation channel. Vessels will be able to maneuver in, around, and through the anchorage. Operators who choose to maneuver their vessels around the anchorage area would not be significantly impacted because the total distance to transit around the anchorage perimeter to the other side, does not exceed 1.1 miles.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Belmont anchorage area.

This anchorage will not have a significant economic impact on a substantial number of small entities for the following reasons. The anchorage will double the anchorage area in this location thus allowing greater vessel volume in order to meet the growing economic needs of facilities along the river, and vessel traffic can pass safely around the anchorage.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in

the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves establishing an anchorage area. This rule is categorically excluded from further review under paragraph 34(f) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110 - ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 110.195, add paragraph (a)(34) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(34) *Belmont Anchorage*. An area 1.1 miles in length along the left descending bank of the river extending from mile 152.9 (Belmont Light) to mile 154.0 above Head of Passes. The width of the anchorage is 300 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

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Dated: February 5, 2013

Roy A. Nash

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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